

In the High Court of Judicature at Madras

Dated: 20/06/2003

Coram

The Hon'ble Mr. Justice K.P.Sivasubramaniam

Writ Petition No.3551 of 2000

and

W.P.M.P.No.5418 of 2000

The Management of
Sundaram Industries Limited,
(Coach Division),
Viralimalai. .. Petitioner.

-Vs-

1. The Presiding Officer,
Labour Court,
Tiruchy.

2. M.Balasubramanian .. Respondents.

Petition filed under Article 226 of the Constitution of India praying
for the issue of a writ of certiorari as stated therein.

For petitioner : Mr.S.Ravindran,
for M/s.T.S.Gopalan & CO.

For 2nd respondent : Mr.V.Prakash

:ORDER

The petitioner/management has sought for the issue of a writ
of certiorari to quash the award of the first respondent, Presiding Officer,
Labour Court, Tiruchy, in I.D.No.93/96 dated 8.12.1999.

2. The petitioner contends that they are carrying different
lines of business, one of which relates to body building for buses, vans and
trucks. They have a unit at Viralimalai and during the relevant period about
300 workmen were working. The unit has separate certified Standing Orders.
The unit was also paying to all its workmen reasonable wages and providing
excellent service from the year 1981. The majority of the workers are members
of T.V.S. Workers' Union affiliated to I.N.T.U.C. which has been recognised
by the Management. A settlement was also executed which was remaining in
operation and it was agreed that the workmen shall not make any demand or
raise any dispute which would involve additional financial commitment to the

Company.

3. Some of the workmen relating to the Viralimalai Unit were not happy with the settlement and these dissident workmen joined the Sundaram Industries Employees' Union and they had started precipitating trivial issues only for the purpose of confrontation with the management. They have seized every opportunity to defy the authority of the superiors and indulged in indiscipline and cause disruption to normal working of the establishment. It is further stated that on 20.7.1994, the second respondent reported for duty in the night shift and he was assigned with the welding work in the roof of a bus body. At about 9.00 p.m. the Supervisor saw him not working and remaining idle. When the Supervisor asked him to do the work, the second respondent refused and again at 10.40 pm. He was asked by the Supervisor to do his work. But the second respondent not only persisted in his refusal, but also abused the Supervisor in filthy language, threatened him and even tried to assault him. On 21.7.1994 the employee was suspended pending enquiry and subsequently a charge memo was issued calling upon him to show cause why disciplinary action should not be taken against him. As his explanation was not satisfactory, an enquiry was held and the second respondent also participated in the enquiry and cross-examined the witnesses who were examined in support of the charges. The employee did not examine any of the workmen. On 15.1.1995 the Enquiry Officer submitted a report holding that charges were proved. A copy of the findings were furnished to the employee for his comments and after considering his representation an order dated 21.3.1995 was passed against the employee dismissing him from service. At the time of dismissal, the employee was drawing a wage of Rs.1850/- per month.

4. The employee raised an industrial dispute challenging the order of dismissal. By order dated 19.8.1998, the Labour Court held that the enquiry was fair and proper. Thereafter, the enquiry was taken up on merits. By order dated 8.12.1999, the Labour Court passed an award holding that the employee had refused to do the allotted work and also abused the Supervisor in the most filthy language and that it cannot also be said that the Supervisor had any ill-will or enmity with the employee. However, in rendering the said finding, the Labour Court held that the misconduct could not be said to warrant punishment of dismissal, and that the punishment was excessive. The Labour Court directed reinstatement of the employee with continuity of service, but without backwages. Hence, the above writ petition.

5. Though the employee has not filed any separate counter in the writ petition, he has contended as follows in his reply to the charge memo before the Enquiry Officer:-

He has contended that a complaint against the Supervisor Murugan was given as regards the incident on 20.7.1994. The direction given by Murugan for carrying out Arc welding job was contrary to the accepted mode of work resulting in improper carrying out the work, which would render the roofing very weak and that overhead welding work was dangerous to the worker and that the worker was also not furnished with proper safety materials to protect himself while carrying out the welding work. But the Supervisor without appreciating his request, started abusing him and directed him to carry out his instructions. It was well known to the management that overhead welding

work was not permissible. He had in fact suffered injuries on his right ear while working at Madurai unit. He has always worked sincerely for the past 18 years and there was no basis in the charge projected against him and he has never been charged with any disobedience or using abusive words or indulging any aggressive behaviour.

6. In his claim statement before the Labour Court the employee had contended that he joined the services of the Company on 1.3.1977 and he had been made permanent and he has blemishless record of service. In the year 1988, the workers wanted a genuine Union for themselves by quitting the Union which was the management controlled union. They had started Sundaram Industries Employees Union. The Company has a policy, not to allow its workmen to have a genuine trade union for themselves. The Company therefore, was built upon adopting all unfair means possible to destroy the union inclusive of abuse of disciplinary powers, illegal lock out and granting cash and loans and other incentives only to those workers belonging to Union sponsored by the management. This case is one of such victimisation. The Enquiry Officer was not an independent person. The employee was also not given the assistance of any co-employee. The charges are very vague without any particulars, nor supported by any materials. The employee was not furnished with any materials. The procedure adopted by the Company was also not proper and the worker was not given any opportunity to examine his own witnesses.

7. Mr.S.Ravindran, appearing for the management contends that the Labour Court found that the enquiry had been properly conducted and that the claim of victimisation as alleged by the worker was also not proved. The charges were also held to be proved. In the said background of proved charges, the direction to reinstate the worker was wholly unwarranted. The failure of Labour Court to take note of the employee's refusal to work and his threat of assault against the Supervisor, have not been properly considered by the Labour Court. The observation by the Labour court that the Supervisor had continuously insisted and forced the worker to carry out the work and that it was only because of that the employee had lost his temper is not at all supported by any evidence. Therefore, the said finding was a perverse one.

8. In the context of what the Courts should do in case of workers indulging in abusive words and violence, learned counsel relies on the following judgments:-

In U.P.S.R.T.CORPN. v. SUBHASH CHANDRA SHARMA (2000 (2) L.L.N., 402), the Supreme Court had to deal with a case of abusive behaviour of a driver with the Cashier demanding money and on the refusal by the Cashier he was threatened with assault. The Supreme Court found that it was a serious misconduct and removal from service was not a punishment shockingly disproportionate to the charge. The Supreme Court also held that the Tribunal ought not to have interfered with the order of dismissal and also held that the High Court failed to exercise its jurisdiction properly under Article 226 of the Constitution of India and not setting aside the erroneous order of the Labour Court.

9. To the same effect are the following judgments:-

- (i) GWALIOR POTTERIES & ORS. v. BHAGWAN DAS AND OTHERS (2002 L.L.R., 255).
- (ii) DEPOT MANAGER, ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION v. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-II, HYDERABAD, AND OTHERS (2001 L.L.R., 814).

10. Learned counsel for the petitioner further contends that to reinstate the petitioner would mean inducing indiscipline among the workers and hence the management cannot be forced to take back the worker who had behaved abusively with his superiors. In D.D.C.SUGAR MILLS v. THE P.O., LAB COURT & ANR. (1997 (II) L.L.J., 833), a Division Bench of this Court held that Section 11-A of the Industrial Disputes Act did not vest power to the Labour Court to impose on the management a workman whose presence was likely to affect the morale and discipline among the workers in the factory. Learned counsel would further submit that even assuming that an order of dismissal was not warranted, if the circumstances disclose that reinstatement of the employee would cause embarrassment to the management and would result in indiscipline among the employees, it was open to the Court to award adequate compensation to the employee in lieu of reinstatement. The petitioner/management was prepared to pay such compensation. Reliance is placed on the judgment of the Supreme Court in O.P.BHANDARI v. INDIA TOURISM DEVELOPMENT CORPN. (Vol.69 F.J.R.,493). Reference is also made to the judgment of a learned single Judge of this Court in S. PALANI v. BAJARAJ TEXTILES (1991 (1) L.L.N., 838). In that case, the delinquent was alleged to have abused his superior by using unpleasant and hurting words. The learned Judge held that such an employee has no right to be reinstated in service. Considering that the delinquent has served for more than 17 years of service, the learned Judge held that a sum of Rs.30,000/- would be sufficient compensation to the delinquent.

11. As regards the amount of compensation to which the workmen would be entitled to, learned counsel contends that the last drawn salary was Rs.1850/- per month and in terms of the method of calculation as adopted by the Supreme Court in O.P.BHANDARI's case, dealt with above.

12. Mr.V.Prakash, learned counsel for the employee contends that the entire action of the management was mala fide and motivated. According to him, petitioner/management which was a sister concern of a Group of Companies, was always in the habit of encouraging only favoured trade unions and employees who were not willing to join the favoured union were always subjected to harsh treatment and accused of having indulging in violence or that he had abused his superiors. It was the usual pattern of action by the petitioner-Company, and clearly intended to get rid of the workers who were not prepared to tow the line of the management. Finding that the right of the workers to join any Union is not illegal, the petitioner-Company had its own way of dealing with the workers as above. It is true that the worker had raised certain objections to the manner of work entrusted to him which was not in conformity either from the angle of proper execution of the body building work or from the point of view of the safety of the worker who was carrying out welding work. The employee had clearly referred to the accepted norms of welding works for body building and for constructing a stronger and long lasting vehicle body and also that overhead

welding was neither permissible, nor suitable for the work, nor safer to the worker. Neither any protective shield nor any proper non-flammable dress had been supplied to the worker. All that the employee did was to raise his concern about his own safety. But the Officers who were only waiting for a chance to send out the employee had given a twist to the entire occurrence. He had never indulged any threat or assault or abusive words against any of his superiors.

13. Learned counsel also took me through the evidence in the context of whether welding work is permissible in the manner as directed to be carried out by the petitioner and whether it was safer. Reference is made to the statement of M.W.1 himself, which according to the employee amounts to admitting that he had given the work of top roof welding to the employee by overhead welding. It is also admitted that the height of the space in between would be above six feet and three inches. It was natural that the sparks of melted metal would fall down. But full leather gloves which have to be supplied for protection, were not furnished to the employee. To a specific question as to why no such gloves was served as was done in Madurai Unit, the witness had stated that he does not know how the work was done at Madurai. The witness had also admitted that the employee had objected to the nature of the welding work entrusted to him. The witness has also stated that if any worker raised such objection, normally some other worker will be asked to do the work. But when the incident took place no other worker was available and therefore, the employee was asked to carry out the work. The witness has also stated that before the incident in question the employee had refused to carry out his directions in time. Mr.V.Prakash also commented on the manner in which the evidence of the petitioner had been recorded. M.W.1's complaint was merely marked in the evidence and he was practically not examined in chief. Reliance is placed on the following two judgments of the Supreme Court in support of his contention that such a procedure was not permissible.

(i) KESORAM COTTON MILLS v. GANGADHAR (A.I.R.1964 S.C.,708).

(ii) KHARDAH AND COMPANY v. ITS WORKMEN (1963 (II) L.L.J., 452).

14. He has further submitted that the employee was entitled to be furnished with all safety materials while discharging the dangerous work as provided under the Factories Act and Rules. The Labour Court while dealing with Section 11-A, had considered all the parameters such as proportionality and whether the worker had indulged in similar misconduct in the past and also the past record. As regards the general conduct of the employee, though the management had taken the stand that the employee was always accustomed to behave in an aggressive manner, no records relating to the said past conduct were placed before the Labour Court. Therefore, the Labour Court had taken into account all the necessary factors and had rightly ordered reinstatement.

15. In reply Mr.S.Ravindran contended that the judgement relied upon by Mr.V.Prakash in the context of Chief-examination of M.W.1, the said judgments related to specific terms of the Standing Orders which were not complied with. Learned counsel relies on the judgment of S.Padmanabhan,J. in WORKMEN OF CHANDRA TEXTILES, v. CHANDRA TEXTILES (1 982 (I) L.L.N., 448). Further the employee has also not pleaded any prejudice by the procedure adopted by management. As regards compliance of Section 11-A, learned counsel

contends that the Labour Court had completely ignored the nature of the misconduct committed by the employee namely, usage of vulgar and abusive expression and assault. The failure to do so was a sufficient ground for this Court to interfere.

16. I have considered the submissions of both sides. It is true that no separate writ petition had been filed by the worker questioning the finding of the Labour Court on the issue of proper conduct of the enquiry and proof of the charges. But it is settled law that in the said

circumstances, it is open to the respondent/worker to sustain the direction of the Labour Court for reinstatement even on merits and would be entitled to question the correctness of the conclusions of the Labour Court.

17. As regards the circumstances which led to the incident, it is true that there is some evidence to show that the nature of work which the employee was directed to comply with, was a risky one and that he has also not been furnished with sufficient safety equipment. It is therefore, clear that the employee had justifiable objections. But whether the said circumstance would provide any justification for an employee to abuse his superiors and attempt to assault by using vulgar and abusive expressions, is the issue to be considered. It is not necessary to extract the abusive expressions alleged to have been used by the employee as the same are not worthy of repetition and as the same find a place in the enquiry proceedings. It is also not the case of the employee that this was the first time he was required to do overhead welding work without a proper gloves and without a proper shield. This practice has been there for quite some time and in fact he has himself suggested to the witness that he (worker) had never refused to comply with the directions of the witness on any earlier occasion. The Supervisor could not have guessed that the worker was going to suddenly adopt a different attitude and would refuse to carry out welding work and that his usual directions could result in the worker resorting to abusive and aggressive attitude. If the employee had decided not to carry out the overhead welding work he could have said so and refused to carry out the work and could have put his objections in writing. Even taking it for granted that he was justified in objecting to comply with the directions, his conduct of aggressive behaviour and attempt to assault by using abusive and filthy expressions against the superiors, cannot at all be justified. It is not necessary to emphasis that a subordinate worker should maintain basic discipline while dealing with the superior. Even among the co-workers one worker has no right to abuse another co-worker or threaten or try to assault or indulge in any violence against the another co-worker which would also amount to subversion of discipline. Curiously, apart from the general denial of the facts stated in the complaint, in the counter statement to the charge memo, the worker had not chosen to specifically state that he did not use any abusive words and that he did not threaten the officer. In the cross-examination of M.W.1 also, the employee had not made any suggestion that the allegation of violence, vulgar words and attempt to assault etc., were false. Apart from M.W.1's evidence M.W.2 who is a management trainee has also spoken to about the aggressive conduct of the worker and the vulgar and abusive words which were used by the worker and that it was M.W.2 who had

actually prevented the worker from assaulting M.W.1.

18. Therefore, the charges of abusive and aggressive behaviour of the worker is clearly established. The Labour Court had also on a detailed analysis found that the allegations against the worker were true and that there was also no basis for the contention on behalf of the worker that the management was trying to victimise him in view of being a member of a particular union.

19. The only ground on which the Labour Court had notwithstanding the aforesaid finding had chosen to direct reinstatement is that the employee being an illiterate person and in view of the circumstance that he had lost his temper, the order of dismissal was disproportionate. One other reason which has been given is that the management has not placed any past record of the worker evidencing any past misconduct.

20. I am inclined to hold that the said reasonings of the Labour Court do not justify invocation of Section 11-A so as to direct reinstatement in a case of this nature. Maintenance of discipline and order in the work place is very essential in any work place, public or private. If an employee could be permitted to use vulgar and filthy words against his superior officers and would also attempt to assault, he does not deserve to be retained in service. Even assuming that he had a justifiable cause, if reinstatement would result in encouraging indiscipline among the workers, then in the alternative the management can be directed to pay reasonable compensation. Such workers who will not behave in a disciplined manner and do not even specifically or seriously dispute the allegation of violent behaviour and using abusive expression, cannot be thrust upon the management who is not willing to take back the worker. In MAHENDRA NISSAN ALLWYNS LTD. v. M.P.SIDDAPPA (2000 (4) L.L.N.,562), the Supreme Court had to deal with a case of aggressive behaviour by the employee and use of filthy language, and the Supreme Court held that the charges were serious in nature. The Supreme Court also remarked that if such charges are not serious charges against a workman worthy of his dismissal from service they (Court) do not know what else can be.

21. The contention that the past record of service of the worker had not been furnished, is also not a proper reason. It is not as though an employee cannot be dismissed from service even as a first offender. The relevancy of past conduct would arise only in assessing the quantum of punishment and if the punishment was disproportionate to the nature of charges. If the first offence itself is serious enough to justify an order of dismissal, there is no necessity to look into the past record of the employee.

22. I am also unable to attach any significance to the manner in which the evidence of M.W.1 had been recorded. It is true that his complaint/statement was put to the witness and the same had been marked in evidence and the delinquent had been asked to cross-examine him. The claim of learned counsel for the management that a copy of the said statement had also been furnished to the delinquent sufficiently earlier to the enquiry is not disputed. In WORKEN OF CHANDRA TEXTILES v. CHANDRA TEXTILES (1982 (1)

L.L.N., 448) S.Padmanabhan,J. has analysed the issue in detail inclusive of the judgment of the Supreme Court which were relied upon by Mr.V.Prakash. The learned Judge held that if the copy of the statement had been furnished to the delinquent sufficiently earlier, then the delinquent cannot be heard to complain. Moreover, in this case, the petitioner had not raised any objection at that stage, nor has he raised any objection specifically as one of the grounds in his claim statement before the Labour Court. Therefore, the respondents cannot be permitted to raise such an objection at this stage.

23. The only issue which remains to be considered is as to whether notwithstanding setting aside of the direction for reinstatement whether the employee would be entitled to any compensation. No procedural defects in the process of enquiry had been pointed out, nor the evidence was found to be insufficient in any manner. The only other ground which would justify the grant of compensation is to see whether there was any extenuating circumstance on the facts and circumstances, which had led to the violent behaviour on the part of the worker. As I had stated earlier, there is some acceptable and admitted evidence to show that overhead welding work was risky and that the worker had not been furnished with proper gloves to protect himself. Therefore, I am inclined to hold that it is just and proper to direct the management to pay the reasonable compensation to the worker by considering the formula adopted by the Supreme Court in O.P.BHANDARI's case. Taking into account that the employee has left over service of 10 years and that the last drawn wages was Rs.1850/- per month, it would be reasonable to direct the petitioner to pay to the second respondent compensation in lieu of reinstatement of the sum equivalent to four years' salary.

24. In the result, I am inclined to pass the following orders:-

- (i) The writ petition is partly allowed setting aside the direction to reinstate the second respondent in service. The findings of the Labour Court on other issues are confirmed.
- (ii) The petitioner is directed either to reinstate the second respondent forthwith without backwages or to pay him compensation equivalent to salary and allowances payable to him for a period of four years.
- (iii) Till such payment is made, the worker shall be paid the usual monthly salary and allowances due to him.
- (iv) All retiral benefits if any any, to which the employee will be entitled to as on this date, shall also be paid to the employee.
- (v) No costs. Connected miscellaneous petition is closed as unnecessary.

Index: Yes.

Internet :Yes.

□